

Memorandum



To: Mr. Verne Walton, MIC:64

Date: February 24, 1994

RECEIVED

FEB 25 1994

Division of Assessment Standards
SACRAMENTO

From: Kristine Cazadd

*K. Cazadd*Subject: Statute of Limitations for Placing Assessments on the Supplemental Roll, R & T Code Section 75.11, subdivision (d)

This is in response to your memorandum dated October 28, 1993, requesting our opinion as to when "enrollment" on the supplemental roll actually occurs for purposes of applying the statute of limitations under Revenue and Taxation Code Section 75.11.

You have described the following circumstances relative to this problem:

1. The Los Angeles County Assessor's office regularly entered into its "Optimum" computer database assessments of changes in ownership and new construction occurring during 1985 through 1988, and mailed notices of supplemental assessment to the affected taxpayers, pursuant to the requirements of Section 75.31.
2. As the expiration of the time period for claiming exemption occurred (under Section 75.40) on a series of assessments each week, the assessor's office electronically transmitted the noticed group of assessments to the Los Angeles County Auditor/Controller for extension of the taxes.
3. Although the supplemental assessment roll data was thus regularly delivered, the error code in the auditor's STR System prevented the auditor from applying the tax rate and from further processing the assessments. The taxes on these supplemental assessments were not extended until September 1993, one year after the September 14, 1992 effective date of the statute of limitations deadline set forth in Section 75.11 subdivision (d).

Based on the information submitted to us, it appears that the transmission problem was not in the delivery of the supplemental assessments by the Assessor, but in the receipt by the Auditor, and was due primarily to the incompatibility of the Auditor's program rather than to defects in the assessments. The result however, was that the Auditor's system could not produce the processed or extended "supplemental roll" from the assessor's transmission of the data, but instead printed out (based on its error code) a document called the "TR Exceptions Report" (copy of 3-page sampling attached). The Report aggregated all the data into a list of two types of "exceptions": (1) the "data exceptions" wherein the error code categorized particular information as not in an acceptable format, and (2) "system errors" wherein the particular category of data could not be electronically but must be manually processed. For some parcels the data pertaining to the assessment was properly interpreted, however, most of the entries were shown in terms of "batch numbers" or codes. The Assessor's office continued to transmit all data on the supplemental assessments on a weekly basis, but without any control over the reception/processing problems in the Auditor's system. While the data base strain shows the transmissions sent to the Auditor over the years, the Auditor's office was not able to translate the data and extend the taxes until September 8, 1993, at which time the supplemental assessments were finally billable.

The question is whether or not the four-year statute of limitations recently added to Section 75.11 in subdivision (d) invalidated these supplemental assessments, since the assessment data was not processed and the taxes were not extended by the auditor until September 8, 1993. At issue is when "placement on the supplemental assessment roll" actually occurs for purposes of applying the statute of limitations.

We note at the outset that some documents received from Los Angeles County pertaining to this question reflect an opinion that notice of supplemental assessment to the assessee is the date to be used for purposes of applying the statute of limitations. However, we find no reference in any of the supplemental assessment provisions to notice constituting either "placement on the supplement roll," as in Section 75.11, subdivision (d), or "enrollment on the supplemental roll," as in Section 75.42. Moreover, we have consistently taken the position in the past with respect to escape and regular assessments, that "entry on the roll," not notice to the assessee is the event to be used to determine whether the statute of limitations has been satisfied in making the

assessment. (See October 8, 1993 Letter by James M. Williams, copy enclosed.)

Chapter 663 of the Statutes of 1992 (AB 3280) which amended Section 75.11 to include the time limits for the enrollment of supplemental assessments, became effective as an urgency measure on September 14, 1992. It provided that under subdivision (d) of Section 75.11, no supplemental assessment shall be valid or have any force or effect unless it is "placed on the supplemental roll" on or before the dates specifically indicated in subparagraphs (1), (2) and (3). However, supplemental assessments made prior to September 14, 1992, are not affected by these provisions. Thus, as we stated in Letter to Assessors No. 93/03, copy attached, the 4-year statutory time limits apply only to supplemental assessments enrolled on or after September 14, 1992. Since the events giving rise to the Los Angeles County supplemental assessments in this case occurred during the 1985 through 1988 assessment years, the statute of limitations in subdivision (d) is applicable and would invalidate the supplemental assessments if enrolled after September 14, 1992.

The specific language in Section 75.11 applies the statute of limitations period in subdivision (d) as follows:

(d) No supplemental assessment authorized by this section shall be valid, or have any force or effect, unless it is placed on the supplemental roll on or before the applicable date specified in paragraph (1), (2), or (3),...

The statute is silent however, as to when a supplemental assessment is actually "placed on the supplemental roll." The definition of "supplemental roll" is found in Section 75.7, which states:

"Supplemental roll" means the roll prepared or amended in accordance with the provisions of this chapter and containing properties which have changed ownership or had new construction completed.

In our Legislative Bill Analysis prepared on August 18, 1992, (copy attached), we determined that the purpose of the Legislature in adding these statute of limitations provisions was to establish consistency in the time periods available to the assessor for making both supplemental and escape assessments. On page 3 of our Legislative Bill Analysis we stated,

"The 4, 6 or 8 year period for making supplemental assessments would be consistent with time periods for making an escape assessment. The length of the statute of limitations would vary with the circumstances surrounding the assessment, as is the case for the regular roll. This equivalence would reduce confusion for taxpayers and assessors in dealing with escape assessments." (See SBOE Legislative Bill Analysis AB 3280, p.3, attached.)

Based on the foregoing, the intent of the statute of limitations was to implement reasonable time limits relative to supplemental assessments for both taxpayers and assessors.

Unfortunately, the statute provides very little guidance on what "roll prepared or amended in accordance with the provisions of this chapter" (under Section 75.7) means. The most pertinent provisions are Sections 75.40 and 75.42. Section 75.40 requires the assessor to transmit the supplemental assessment to the auditor, after the period for claiming exemptions has expired. Although it specifies the information to be included in the supplemental assessment, Section 75.40 does not indicate that such information is the actual supplemental "roll prepared". Section 75.42 requires that the information transmitted from assessor to the auditor, together with tax extensions, "shall be enrolled on the supplemental roll." Section 75.42 states:

"The information transmitted to the auditor by the assessor, together with the extended taxes due, or extension of refund, shall be enrolled on the supplemental roll."

The language does not explain what the roll is, who prepares it, and how or when or by whom the entry of the supplemental assessment is to be made. This ambiguity requires that we consult other authorities for guidance.

The State Controller, in the County Tax Collector Reference Manual Glossary, page G22, defines supplemental assessment as "An adjustment in valuation resulting from change in ownership or completion of new construction which alters a property's taxable value."

Two definitions in the County Tax Collector Reference Manual concerning the supplemental roll are also pertinent here. Section 3101 states,

"The 'supplemental roll' may be defined as a system of assessments adjusting taxes when new taxable values are

determined following a change in ownership of locally-assessed real property or completion of construction on locally-assessed real property."

And Section 3103 defines the roll being prepared as follows:

"The roll for the fiscal year following the fiscal year in which the event occurs which leads to a supplemental assessment is designated as 'roll being prepared' (Section 75.3). Although it is mentioned here and in some escape assessment and correction statutes, the 'roll being prepared' is not a physical entity capable of being inspected."

Although these guidelines do not address when an assessment is placed on the supplemental roll, they do define the specific responsibilities of county officials who produce the supplemental assessment roll. Section 3011 of the County Tax Collector Reference Manual states:

"The assessor must discover and assess property subject to supplemental assessment. The assessor values the property, allows or disallows exemptions claimed, notifies the assessee of the amount of pending supplemental assessment and of equalization appeal rights, and transmits data to the auditor (Sections 75.30, 75.31, 75.40). The auditor applies the appropriate tax rate to each assessment, computes taxes for a full year and applies a proration factor which adjusts the tax amount to the remainder of the fiscal year for which the assessment is effective, divides the tax into two equal installments, enrolls the assessment and transmits it to the tax collector (Sections 75.41, 75.42, 75.50)."

Based on the Controller's definitions and description of how it is produced, it is clear that the supplemental roll is not a single document or electronic list of assessed valuations, but a system of individual supplemental assessments. Furthermore, both the assessor and the tax collector are involved in the process. The assessor is said to discover, record, notice the assessee, and transmit the assessment to the auditor, and the auditor is stated as enrolling the assessment together with the extended taxes on the supplemental roll.

This concept of the roll as a system or process is supported by the practices of most assessors' offices in the administration of supplemental assessments. As we understand the administrative process, the assessment function of making the

supplemental assessment roll consists of on-going procedures in the nature of those described above in Section 3011 of the County Tax Collector Reference Manual. That is, the assessor discovers and identifies a property subject to supplemental assessment (new construction, changes in ownership). The assessor calculates the value change for the property and allows or disallows any exemptions claimed. The assessor enters the information into the supplemental roll data base. The resultant supplemental assessment is not finalized or completed by the assessor however, until notice of assessed value change is sent notifying the assessee of the amount of pending supplemental assessment and of equalization appeal rights and the expiration of the notice/appeal period has occurred (Section 75.31). Immediately thereafter, the assessor assigns a date and supplemental roll number to the assessment, and on that date transmits the supplemental roll to the auditor for extension of the taxes. (Most assessors' offices transmit supplemental "rolls" to auditor weekly.) Thus, the assessor's responsibilities with regard to the supplemental "roll prepared" are completed upon its delivery, and the date on the "roll prepared...containing properties which have changed ownership or had new construction" is the date of delivery. At this point, the supplemental assessment is "placed on the supplemental roll" in the assessor's view.

In practice then, the phrase "placed on the supplemental roll" in Section 75.11, subdivision (d) seems to refer to an ongoing scheme or system whereby the assessor continually makes adjustments in valuation resulting from change in ownership or completion of new construction and transmits such assessments in final form to the auditor. Each supplemental assessment is actually placed on a supplemental roll upon its completion (Sections 75.20 - 75.32) and its transmission to the auditor. Thus, the date for placement on the supplemental roll is whenever any supplemental assessment roll is delivered to the auditor's office.

It is at this point also that no further changes can be made in the assessment, and this is the last date upon which that particular assessment can be tracked and controlled by the assessor. (The auditor's extension of the taxes/refunds is electronically computed at the time of billing and is not tracked for time, since the assessor's date placed on the roll at the time of delivery remains as the roll date for the auditor.) For this reason, all of the various assessors' offices questioned, viewed the statute of limitations under Section 75.11, subdivision (d) as a time limitation within which the assessor exclusively must perform his/her prescribed duties, i.e., making the supplemental assessments and "placing"

the assessments on the supplemental roll by transmitting them to the auditor. It is logical to conclude that since the assessor has no authority over the auditor, and is unable to control or track the supplemental assessment after delivery to the auditor, from a practical viewpoint there is no other means of assuring compliance with the time limits.

Frequently cited by assessors in support of this viewpoint is subdivision (e) of Section 75.11, which delegates authority to the assessor only for negotiating an extension of the statute of limitations period with the taxpayer. Under subdivision (e), if, before the expiration of the statute of limitations period, the taxpayer and the assessor agree in writing to extend the time period for making a supplemental assessment, the time period may be extended per their agreement. Assessors believe that this direct authorization to assessors to extend the statutory time limits manifests the intention of the Legislature to have the assessor rather than the auditor "place the assessment on the supplemental roll" for statute of limitations purposes. We agree that such reasoning seems logical. It is difficult to conceive of a legislative plan which would authorize the assessor to negotiate an extension of the statute of limitations period, but hold the auditor and not the assessor, responsible for placing the assessment on the roll within that period.

In view of the differences between the provisions in Section 75.42 of the Revenue and Taxation Code and in the Section 3011 of the County Tax Collector Reference Manual stating that the auditor enrolls the supplemental assessment, and the actual administrative practices wherein the assessor produces, dates, and records on a numbered supplemental roll all supplemental assessments, the reference in Section 75.11, subdivision (d) to "placement on the supplemental roll" has one of two possible meanings: 1) "placement" is not the same as "enrollment" for statute of limitations purposes and occurs when the assessor transmits the supplemental assessment to the auditor, or 2) "placement" is the same as "enrollment" and occurs when the auditor processes and "enrolls" the extended taxes/refunds. Although the question is not necessarily free of all doubt, it appears to us that the first meaning is correct for the following reasons.

First, as previously discussed, both the statutory scheme and the Controller's guidelines for supplemental assessments assign to the assessor all of the responsibilities required to produce a valid assessment, e.g., discovery, computation of value, notice, and delivery of the supplemental assessment roll and to the auditor. If the taxpayer subsequently questions any aspect

of the assessment (for example, the value, date, property ownership, or timing), the assessor is the only county official having documents to verify the information and the only official capable of making a correction in the event that the assessment records disclose a mistake. The auditor possesses none of the documents forming the basis of the supplemental assessment and is therefore unable to control or track the timing of the assessment. From the practical perspective, the assessor controls the entire network for producing the supplemental roll and therefore, shoulders the total responsibility for meeting the time limitations.

Second, the fact that the auditor retains the same supplemental roll number and date on the assessment after applying the tax rate and calculating the extension of the taxes/refunds to the assessment roll indicates that the assessor's entry should be construed as "placement on the supplemental roll," while the auditor's entry of the extended taxes/refunds should be viewed as "enrollment on the supplemental roll." Since the county assessors and auditors have simultaneous authority for the administration and enforcement of supplemental assessments, we believe that the specific practices which incorporate their interpretation and application of these provisions should be given great weight. (See Carlson v. Assessment Appeals Bd. (1985) 167 Cal.App.3d 1004, 1012, citing Coca-Cola Co. v. State Bd. of Equalization (1945), 25 C.2d 918, in which the Court held that "The contemporaneous administrative construction of a statute by those charged with its enforcement and interpretation, while not necessarily controlling, is entitled to great weight, and courts generally will not depart from such construction unless it is clearly erroneous or unauthorized.")

Third, since there is no question that the provisions of Section 75.11, subdivision (e) delegate to the assessor exclusively the authority to extend the statute of limitations by negotiating an agreement with the taxpayer, the assessor must similarly have the authority to determine when the assessment is placed on the roll for statute of limitations purposes. It is certainly logical to presume that the official charged with the responsibility for negotiating with the taxpayer for an extended period of time, if an extension is necessary, under Section 75.11, subdivision (e), is by implication the same official who has the concomitant authority to track and enforce the time involved for any supplemental assessment; and must therefore, be the same official responsible for "placement on the supplemental roll" within the statutory period under Section 75.11, subdivision (d). As previously discussed, the assessor is the only official clearly

in this position of responsibility. Therefore, it is the assessor who "places" the assessment on the supplemental roll on the date of its delivery to the auditor, since this is the last date entered on that supplemental roll. This is the only date which is recorded and traceable for purposes of determining after the fact when the assessment was placed on the roll.

Finally, we do not find sufficient reasons for concluding that "placement on the supplemental roll" occurs when the auditor extends the taxes/refunds. As previously discussed, it is illogical to assume that the Legislature would delegate enforcement of the statute of limitations to the auditor when the entire statutory scheme seems to depend on the assessor's functions. Sound tax administration policy suggests generally that the Legislature's intent for the enforcement of the statute of limitations should be consistent, rather than inconsistent, with the assessor's and auditor's existing duties in regard to the supplemental roll, and suggests specifically that the auditor should not be liable for the extended deadlines negotiated and established between the assessor and the taxpayer. Moreover, none of the county offices contacted have indicated in their policies or practices that the auditor, rather than the assessor, "places the assessment on the supplemental roll" for statute of limitations purposes. Indeed, there is no record kept of the date the auditor enrolls the extensions, and thus, no traceable event for purposes of determining time limit compliance.

Ultimately, the final determination of when "placement on the supplemental roll" occurs for statute of limitations purposes is a question of fact based on actual assessment practices in each county office. We are persuaded at this time to take the position that "placement on the supplemental roll" means delivery of the completed assessment by the assessor to the auditor, and not extension of taxes by the auditor (or notice to the assessee as Los Angeles advocates). However, the actual date of such "placement" on the supplemental roll" of any particular supplemental assessment is a factual matter which only the Los Angeles County Assessor's office can conclusively address.

Based on the facts submitted at this particular time, the Los Angeles County Assessor's office apparently loaded each supplemental assessment (for the 1985-1988 period) into its data base in a "notice/hold file," and following the notice period, made a weekly documented (and dated) electronic delivery on a "transaction tape" to the auditor's office within the statutory period i.e., before September 14, 1992. Thus, it

appears that any "supplemental assessment roll" delivered to the auditor before September 14, 1992, was timely, since the date on which the roll was sent is the date on which such supplemental assessments were "placed on the supplemental roll" for statute of limitations purposes.

You also question whether the assessor's office is correct in concluding that the installment payment provisions under Section 4837.5 may not be applied to supplemental assessments. The answer to this question is yes. We agree that the payment of taxes on an installment basis over a period of four years, as delineated in Section 4837.5, applies only to escape assessments, where the error causing the escape assessment was not that of the assessee. Under the present statutory scheme there is no similar installment payment provision for supplemental assessments. See Section 75.13 which expressly provides that any supplemental assessment shall not be deemed to be an escape assessment subject to Section 4837.5.

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Attachments

cc: The Honorable Kenneth P. Hahn, Los Angeles County Assessor
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February 3, 1998

In Re: Statute of Limitations on Escape and Supplemental Assessments.

Dear

This is in response to your April 17, 1997 letter, concerning the applicability of certain statute of limitations provisions to the following factual situation:

1. Taxpayer, a defense contractor operating a large facility in Los Angeles County was wholly owned by Original Parent Company. In August 1983, Original Parent Company sold 100 percent of Taxpayer's voting stock to Second Parent Company, resulting in a change in control of Taxpayer under Section 64(c).
2. In April 1984, Taxpayer filed the Business Property Statement (Form 571) with the assessor's office, disclosing its 1983 change in control. In January 1985, Taxpayer filed its 1983 California Tax Return with FTB disclosing the 1983 change in control.
3. In November, 1985, responding to a request from the Board of Equalization staff, Taxpayer filed a Change in Ownership Statement per Section 480.1, with the State Board of Equalization (LEOP Division), reporting the 1983 change in control.
4. In March 1986, the LEOP staff sent information to the Los Angeles County Assessor concerning the Taxpayer's 1983 change in control. And in October 1986, Taxpayer mailed the Los Angeles County Assessor a completed "Statement of Corporate Acquisition," (a county-generated form) further disclosing the 1983 change in control, and enclosing with it a copy of the Change in Ownership Statement filed with LEOP in 1985.

5. The 1991 "Office of Assessor Property Data Base" shows entries for 1983 - 1987 supplemental and escape assessments, and the assessor's records include a copy of a "Notice of Assessed Value Change" (with a 1991 mailing date). The Notice stated that "changes that affect the following rolls will be processed automatically," and only the 1983 supplemental assessment is shown. Taxpayer's records show no receipt of this Notice.

6. By 1992, due to base closures and cutbacks in the defense/aerospace industry, the Taxpayer lost all of its government contracts and business revenue, and terminated all of its 1000 employees except one, and went into liquidation.

7. Between January and May 1995, the Los Angeles County Tax Collector sent Taxpayer adjusted tax bills for the 1983 supplemental assessment and 1984 through 1987 escape assessments.

You believe that neither the entries for the supplemental and escape assessment, nor the 1995 tax bills were timely under the applicable statute of limitations provisions. The Los Angeles County Assessor and the Los Angeles County Assessment Appeals Board disagree. Although we attempted to secure further information and Findings of Fact from the County of Los Angeles Assessment Appeals Board No. 3 in regard to this matter, that office has been unable to track the identity of the Taxpayer or the property based on the data in your letter. Consequently, our analysis, as hereinafter explained, is limited primarily to a discussion of the legal issues concerning the statutes of limitations for the timely enrollment of supplemental and escape assessments and timely filing of appeals for supplemental and escape assessments, and our conclusions should not be considered a dispositive answer to your factual situation.

Questions/Answers on Timely Enrollment and Timely Appeal for Supplemental and Escape Assessments.

For purposes of the statute of limitations in general, both supplemental and escape assessments are governed by certain requirements related to 1) timely enrollment or delivery of the assessment to the county auditor, and 2) timely notification of assessment to the assessee. However, there are differences as to whom the statute of limitations impacts and the date that impact occurs.

1. What is the effect of the statute of limitations on enrollment of a supplemental assessment?

The statute of limitations is a concern of the assessor, for purposes of determining whether the supplemental assessment is enrolled timely. Chapter 663 of the Statutes of 1992 (AB 3280) which amended Section 75.11 to include the time limits for the enrollment of supplemental assessments and became effective as an urgency measure on September 14, 1992, provided in Section 75.11(d), that no supplemental assessment shall be valid or have any force or effect unless it is "placed on the supplemental roll" on or before the dates specifically indicated in subparagraphs (1), (2), and (3). The statutory language "placed on the supplemental roll," in Section 75.11(d) means the date the assessor delivers to the auditor the supplemental assessment information required by law. (Prescribed information-Section 75.40.) Supplemental assessments made prior to September 14, 1992, are not affected by these provisions. However, as further explained in Letter to Assessors No. 94/32, where the events giving rise to a supplemental assessment occurred during the 1983 assessment year, as here, the statute of limitations in subdivision (d) would be applicable and would invalidate any such

assessment if enrolled after September 14, 1992, unless the required change in ownership statement had not been timely filed (Section 75.11 (d).) (See also Letter to Assessors No. 95/35 explaining that the statute of limitations for making supplemental assessments does not commence until July 1 of the first assessment year in which the change in ownership statement is filed.)

2. What is the effect of the statute of limitations on filing an appeal on a supplemental assessment?

The statute of limitations is a concern of the taxpayer/assessee for purposes of determining the time within which the taxpayer may file an appeal on a supplemental assessment. The 60-day time within which such appeal may be filed begins to run on the date of notice of supplemental assessment under Section 75.31 (c). For counties in which the Board of Supervisors has adopted the provisions of Section 1605(c), the notice shall advise the assessee of the right to appeal the supplemental assessment, and that the appeal must be filed within 60 days of the date of the mailing of the tax bill. Section 75.31 (g) states that the notice shall be furnished by the assessor to the assessee by regular United States mail directed to the assessee at the assessee's latest address known to the assessor. However, Section 75.32 states that the failure of the assessee to receive a notice required by Section 75.31 shall not affect the validity of any assessment or the validity of any taxes levied pursuant to this chapter

Section 1605(c) provides that the board of supervisors of any county may by resolution require that the application for reduction pursuant to subdivision (a) of Section 1603 be filed with the clerk no later than 60 days after the date of the mailing of the tax bill. Los Angeles County has presumably implemented this provision.

3. What is the effect of the statute of limitations on enrollment of escape assessments?

How and when "enrollment" occurs is different for escape assessments than for supplemental assessments. (Letter to Assessors No. 95/35.) As with supplemental assessments, the statute of limitations is a concern of the assessor, for purposes of determining whether escape assessments are enrolled timely. However, Section 534 distinguishes between "placing" or "entering" an escape assessment on the roll and "making" an escape assessment. An escape assessment is "entered" or "placed" on the roll, per Section 534, when the required assessment information is delivered to the auditor. The escape assessment is not "made" on that same date, unless the assessee is notified of the assessment within 60 days after the statute of limitations or within 60 days after the placement of the escape assessment on the roll. Otherwise, the escape assessment is not "made" until the assessee receives notice or the tax bill (which serves as notice). (See Letter to Assessors No. 94/32, p.6-7.)

Under Section 534, "enrollment of an escape assessment" is deemed made on the date on which the escape assessment is entered on the roll only if the assessee is notified of the assessment within 60 days. However, effective on January 1, 1994, Section 531.8 imposes the added requirement that no escape assessment shall be enrolled, until 10 days after the assessor has mailed to the assessee a "Notice of Proposed Escape Assessment." (Letters to Assessors No. 94/46, and 94/06).

Therefore, after January 1, 1994, the assessor must undertake three steps to "enroll" an escape assessment: (1) mail or deliver a Notice of Proposed Escape Assessment to assessee 10 days before enrollment, (2) deliver the required escape assessment information to the auditor for enrollment (10

days or more) after Notice of Proposed Assessment was mailed to assessee, and (3) mail or deliver notice of escape assessment within 60 days after the statute of limitations¹ or 60 days after the escape assessment is placed or entered on the roll.

4. What is the effect of the statute of limitations for filing an appeal on an escape assessment?

The statute of limitations is a concern of the assessee for purposes of determining the time within which an appeal may be filed on an escape assessment. Section 1605 (a) provides that an assessment made outside of the regular assessment period is not effective for any purpose until the assessee has been notified thereof personally or by United States mail. Section 1605(b) provides that an application for reduction shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. In light of section 534, whereunder determinative for all purposes is when the assessment is made, the 60-day time period under section 1605 can begin to run at different points in time:

1. If the assessee is notified of the assessment within 60 days after the statute of limitations or the placing of the assessment on the assessment roll, the appeal must be filed within 60 days after the date the assessee was notified. (Sec. 534)

2. If the assessee is not notified of the assessment within 60 days after the statute of limitation or the placing of the assessment on the assessment roll, the appeal must be filed within 60 days after the date the assessee is so notified. (Sec. 534)

3. If the assessee is not notified of the assessment, the appeal must be filed within 60 days of receipt by the assessee of a tax bill based on that assessment, which tax bill suffices as notice (Secs. 534 and 1605(a)).

4. For counties of the first class, Los Angeles County, the appeal must be filed within 60 days of the date of the mailing of the tax bill (Sec. 1605(b)).

Although not discussed in LTA 94/06, in our opinion, the added "Proposed Notice" requirement under Section 531.8 has no effect on the assessee's appeal period for escape assessments placed or entered on the roll prior to January 1, 1994. If the assessee has been notified of the assessment, the appeal must be filed within 60 days of the notice (1 and 2, above). If the assessee has not been notified of the assessment, the appeal must be filed within 60 days of receipt or of mailing of the tax bill (3 and 4, above).

Application of Answers 1 and 2 to Taxpayer's 1983 Supplemental Assessment

¹ Prior to January 1, 1995, the assessor had four, six, or eight years from the date of the event causing the escape to enroll the escape assessment. Effective January 1, 1995, Section 532 (b) required that the statute of limitations for making escape assessments would not begin to run until a change in ownership statement under Sections 480 et seq. is filed. Therefore, the assessor's time limitations for enrollment (four or six years) of escape assessments after January 1, 1994, does not commence until the change in ownership statement is filed.

Based on the foregoing, it appears that the 1983 supplemental assessment was valid. If, as the facts indicate, the 1983 supplemental assessment was placed on the supplemental roll in 1991, then it was not affected by the provisions of Section 75.11(d).

The problem encountered by this Taxpayer is that the "Notice of Assessed Value Change" ("notice of supplemental assessment") was sent to the Taxpayer in 1991, but the supplemental tax bill was not mailed until much later, in 1995. During this four-year lapse between the notice and the supplemental tax bill, the Taxpayer became bankrupt, and the result of the delay was an unintended hardship on the Taxpayer since its source of revenues had been extinguished by 1995 when the tax bill (notice) was received. However, there is no authority for invalidating a timely enrolled, pre-September 14, 1992, supplemental assessment because notice in the form of the tax bill has been sent much later.

Under the statutory scheme for supplemental assessments, discussed above, the fact that notice of the supplemental assessment is not sent to the assessee does not delay or otherwise impact the date the assessment was enrolled. This was the subject of the recent case of *Montgomery Ward & Co. v. Santa Clara County*, 47 Cal.App.4th 1122 (1996). The court held that the 1988-89 supplemental assessment was invalid and forever barred, because it was not enrolled by September 14, 1992, (the fourth July 1 following July 1, 1988) as required by Section 75.11(d). Unlike the facts in *Montgomery Ward & Co.*, the 1983 supplemental assessment here was enrolled before September 14, 1992. Although the tax bill was not received by the Taxpayer until 1995, this merely affected the Taxpayer's appeal rights, obviously preserved since the Taxpayer did file an appeal and received a hearing thereafter.

Application of Answers 3 and 4 to 1984-87 Escape Assessments

Regarding the escape assessments for the years following (1984 through 1987), application of the provisions governing enrollment of escape assessments (Section 534 and Section 531.8) indicates that the escape assessments were invalid.

1. The escape assessments were entered or placed on the roll in 1991 when the required assessment information was delivered to the auditor.
2. The assessments were not "deemed made" per Section 534 in 1991, as the Taxpayer was not notified of them.
3. Prior to the enactment of Section 531.8, the assessments would have been "deemed made" in 1995, on the mailing of the tax bills to Taxpayer.
4. As of January 1, 1994, however, Section 531.8 imposed an additional requirement for the making of escape assessments, that no escape assessment under Sections 531-538 could be levied before 10 days after the assessor mailed or otherwise delivered to Taxpayer a "Notice of Proposed Escape Assessment."
5. Notices of Proposed Escape Assessments were never sent, and the failure to send these notices prevented the making of escape assessments that had not been "deemed made" before January 1, 1994.

February 2, 1998

6. Since escape assessments meeting the requirements of Section 531.8 and 534 were not "deemed made" or enrolled, the tax bills did not constitute notice.

It would follow then that Section 531-538 assessments were not effective for purposes of review, equalization, and adjustment by the assessment appeals board if they were not made in accordance with applicable statutory requirements.

The views expressed in this letter are, of course, only advisory in nature. They represent the analysis of the legal staff of the Board based on the present law and the facts set forth herein. Therefore, they are not binding on your office or on any person or entity.

Very truly yours,

Kristine Cazadd
Senior Staff Counsel

Attachments:

Letters to Assessors No. 95/35, 94/32, 94/46, and 94/06

KEC:ba

cc: Honorable Kenneth Hahn
Los Angeles County Assessor

Ms. Patricia Bustos
Los Angeles County Appeals Board Clerk

Mr. Richard Johnson
Mr. Rudy Bischof
Ms. Jennifer Willis

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